

## Item #17: Biological Evaluations (Assessments)<sup>1</sup>

**Evaluation Objectives:** To evaluate compliance with the Endangered Species Act.

**Methods:** Compilation of project records include the number of biological assessments (BAs) conducted, and determination of effects by species and concurrences or Biological Opinions received from the U. S. Department of Interior Fish and Wildlife Service (FWS).

**Evaluation:** All projects, other than those with no effect determinations for all species, undergo consultation or are reported to the FWS. Table 17-1 displays the number of biological assessments completed for terrestrial wildlife species, findings by listed species and concurrences received since 1998. Project assessments and consultations for 2008-2010 are similar to previous years.

Because of reduced threats and meeting parameters within the recovery plan the FWS announced the *final rule designating the northern rocky mountain population of gray wolf as a distinct population segment and (DPS) removing this distinct population segment from the federal list of endangered and threatened wildlife*, effective March 28, 2008. A lawsuit reversed the FWS decision and on 7/18/2008 the northern Rocky Mountain gray wolf was relisted again as endangered and management actions with potential effects underwent consultation with the FWS. On January 14, 2009, FWS announced its decision to delist the Rocky Mountain wolf population except in the State of Wyoming with publication of the final rule made in May, 2009. On August 5, 2010, the District Court vacated the delisting with wolves throughout the entire NRM DPS relisted. A section of the 2011 Appropriations Act directed the Secretary of the Interior to revise the List of Endangered and Threatened Wildlife by removing most of the gray wolves in the DPS. This rule was published in the Federal Register and effective May 5, 2011.

In 2006, the FWS designated 1,841 square miles of critical habitat for the lynx within the boundaries of Voyageurs National Park in Minnesota, Glacier National Park in Montana, and North Cascades National Park in Washington. In February 2008, the Service proposed to revise the critical habitat designation after questions were raised about the integrity of the scientific information used and whether the decision made was consistent with appropriate legal standards. The rule designating revised Critical Habitat became effective on March 27, 2009 (Federal Register, February 25, 2009/Rules and Regulations).

**Table 17-1.** Compliance with the Endangered Species Act (ESA) for Terrestrial Species.

	BAs # Completed	Findings by Species <sup>2</sup>						Concurrence #s	BO #s
		Eagle	Wolf	Falcon	Grizzly	Lynx	Lynx CH		
1998	29	NE 26 NLAA 2 LAA MB 1	NE 25 NLAA 4 LAA	NE 29 NLAA LAA	NE 17 NLAA 10 LAA MB 2	Not listed		14	

<sup>1</sup> Only terrestrial wildlife species were listed in 1986. Bull Trout listed in 1998; Howellia listed in 1994. Separate BAs are completed for terrestrial wildlife, fish and plants.

<sup>2</sup> No Effect (NE), Not likely to Adversely Affect (NLAA), Likely to Adversely Affect (LAA), May Benefit (MB).

	BAs #		Findings by Species <sup>2</sup>					Concurrence #s	BO #s
	Completed	Eagle	Wolf	Falcon	Grizzly	Lynx	Lynx CH		
1999	19	NE 18 NLAA 1 LAA	NE 17 NLAA 2 LAA	NE 18 NLAA 1 LAA	NE 14 NLAA 5 LAA	Not listed		4	
2000	8	NE 8 NLAA LAA	NE 7 NLAA 1 LAA	Delisted	NE 3 NLAA 4 LAA MB 1	NE 4 NLAA 3 LAA		5	
2001	8	NE 7 NLAA 1 LAA	NE 8 NLAA LAA		NE 2 NLAA 6 LAA	NE 3 NLAA 5 LAA		7	0
2002	11	NE 8 NLAA 3 LAA	NE 4 NLAA 7 LAA		NE 1 NLAA 6 LAA 4	NE 6 NLAA 5 LAA		7	4
2003	13	NE 13 NLAA LAA	NE 5 NLAA 8 LAA		NE 2 NLAA 6 LAA 4	NE 4 NLAA 8 LAA 5		8	5
2004	18	NE 12 NLAA 6 LAA	NE 8 NLAA 10 LAA		NE 5 NLAA 8 LAA 5	NE 5 NLAA 8 LAA 5		10	5
2005	12	NE 7 NLAA 5 LAA	NE 5 NLAA 7 LAA		NE 0 NLAA 10 LAA 2	NE 4 NLAA 8 LAA		7	2
2006	19	NE 13 NLAA 6	NE 10 NLAA 9		NE 4 NLAA 15	NE 7 NLAA 12		5	0
2007	16	NE 9 NLAA 7 Delisted 7/07	NE 11 NLAA 7 LAA		NE 2 NLAA 16 LAA	NE 7 NLAA 10 LAA 1		8	1
2008	14	Delisted	NE 2 NLAA 8 LAA Delisted/relisted		NE 2 NLAA 10 LAA 2	NE 4 NLAA 9 LAA 1	NE NLAA 1 LAA Prop. CH	11 1 BA based on 2003 programmatic consultation	3
2009	16		NE 2 NLAA 4 LAA Delisted		NE NLAA 14 LAA 1	NE 6 NLAA 8 LAA 2	NE 6 NLAA 8 LAA 3 CH Final Rule	9 5 BA based on 2003 programmatic consultation	3
2010	14		NE NLAA LAA Relisted		NE 2 NLAA 10 LAA 2	NE 6 NLAA 7 LAA 1	NE 8 NLAA 5 LAA 1	6 5 BA based on 2003 programmatic consultation	3

In the 2000s, projects were fewer but more complex due to large wildfires and subsequent priority for salvage and restoration. Also, many activities such as prescribed burning or thinning are being included with vegetation management project planning to incorporate multiple landscape objectives in one planning document.

In 2003, biologists from the FWS and Forest Service in Montana agreed to a programmatic approach to Section 7 consultation to expedite consistent, adequate biological review and fulfillment of Section 7 obligations for a wide range of minor projects and activities. These

projects that fit within a screen have already been considered in the 2003 programmatic biological assessment consultation and subsequent updates. These do not require additional informal consultation with, and do not receive a written concurrence, from the FWS. Annual reports to the FWS and periodic reviews monitor implementation of projects that fit the programmatic biological assessment. The Region 1 programmatic consultation process is used on a regular basis for projects that fall within the sideboards established in 2003 as updated. In 2004, Counterpart Regulations for Consultation under the ESA were agreed to by the FWS and action agencies to implement the Healthy Forests Initiative and streamline consultation on projects that support the National Fire Plan (NFP). NFP projects that are NLAA determinations do not undergo informal consultation with and do not receive a written concurrence from the FWS. Annual reports to FWS and periodic reviews monitor the Counterpart Regulations implementation. The Counterpart Regulation streamlined consultation procedure has not been used on the Flathead since 2006 due to the complexity of many of our projects and efficient relationships with the FWS Helena staff. Flathead N. F. biologists began to use these two new tools in 2005 when “not likely to affect determinations” were made for proposed projects that fit within the parameters of these two processes and therefore, consultation with the FWS would not occur but the projects are regularly reported to the FWS.

**Recommended Action:** Continue to report biological assessments completed within the annual Fish, Wildlife, and Rare Plant database and to the FWS. Item 17 as written does not reflect all forest coordination and cooperation to evaluate, minimize, and reduce effects to listed species, and mitigation measures or conservation actions for listed species. Include bull trout and Howellia assessments to truly reflect conservation, protection and consultation occurring on the forest.

Biological Assessments (with appropriate documentation) are required for all proposed projects. Section 7 of the ESA consultation with the FWS is mandatory on any action that “may affect”, “not likely to adversely affect” (NLAA) or “likely to adversely affect” (LAA) a listed species or habitat, except in those 2 situations listed above. The ESA requires all federal agencies to review actions authorized, funded or carried out to ensure such actions do not jeopardize the continued existence of listed species. Amendment #11 in 1989, reassures this, although the amendment is redundant based on law and Forest Service Manual 2670 direction.